

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION

Timothy R. Johnson,

Plaintiff,

**VS.**

Hampton County Detention Center,  
Captain Kelvin Ruth, Sergeant  
LaShonda Marshall, Corporal John  
Mixson, Corporal Christein Jones,  
Administrator Calvin Jones,

Defendants.

Civil Action No. 6:07-2792-HMH-WMC

## REPORT OF MAGISTRATE JUDGE

The plaintiff brought this action seeking relief pursuant to Title 42, United States Code, Section 1983. On June 16, 2008, the defendants filed a motion for summary judgment. On June 17, 2008, pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), the plaintiff was advised of the summary judgment procedure and the possible consequences if he failed to respond adequately. On June 19, 2008, the plaintiff filed his own motion for summary judgment.<sup>1</sup> The defendants also filed their opposition to the plaintiff's motion on June 19, 2008.

On July 2, 2008, the plaintiff filed a motion to compel, to which the defendants filed their opposition on July 21, 2008. By order of this court filed July 23, 2008, the motion to compel was denied and the plaintiff was given through August 15, 2008, to file his response to the defendants' motion for summary judgment. The plaintiff was advised that if he failed to do so, this action would be subject to dismissal for failure to prosecute.

<sup>1</sup>The plaintiff had previously moved for summary judgment on April 2, 2008.

pursuant to F.R.Civ.P. 41(b), and the dismissal would be considered an adjudication on the merits, i.e., *with prejudice*. The plaintiff elected not to respond.

Based on the foregoing, it appears the plaintiff no longer wishes to pursue this action. Accordingly, it is recommended that this action be dismissed for lack of prosecution *with prejudice* pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. *Ballard v. Carlson*, 882 F.2d 93 (4th Cir. 1989), *cert. denied*, 493 U.S. 1084 (1990).

s/William M. Catoe  
United States Magistrate Judge

August 19, 2008  
Greenville, South Carolina